

HOUSE BILL REPORT

EHB 1967

As Passed Legislature

Title: An act relating to prohibiting expansions of urban growth areas into one hundred year floodplains.

Brief Description: Prohibiting expansions of urban growth areas into one hundred year floodplains.

Sponsors: Representatives White, Campbell, Nelson, Simpson, Williams, Wallace, Dunshee, Dickerson, Hunt, Ormsby and Sullivan.

Brief History:

Committee Activity:

Local Government & Housing: 2/16/09, 2/18/09 [DP].

Floor Activity:

Passed House: 3/10/09, 61-35.

Senate Amended.

Passed Senate: 4/10/09, 38-7.

House Concurred.

Passed House: 4/20/09, 60-34.

Passed Legislature.

Brief Summary of Engrossed Bill

- A county, city, or town is generally prohibited from expanding an urban growth area into the 100-year floodplain of any river or river segment that is located west of the crest of the Cascade Mountains and has a mean annual flow of 1,000 or more cubic feet per second, except under certain specified circumstances.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: Do pass. Signed by 7 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, Upthegrove, White and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Angel, Ranking Minority Member; Cox, Assistant Ranking Minority Member; Short.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Thamas Osborn (786-7129)

Background:

Floodplain Management and Regulation.

Title 86 of the Revised Code of Washington, entitled "Flood Control," contains a series of chapters pertaining to the management and regulation of floodplains. Statewide, the Department of Ecology (DOE) is authorized to oversee the management of floodplains in conjunction with counties and flood control zone and flood control districts. With respect to floodplain management, the duties of the DOE include:

- the review of county, city, or town, floodplain management ordinances;
- generally providing technical guidance and assistance to local governments; and
- assisting local governments in identifying the location of the "100-year floodplain."

Flood control zone districts are authorized to create zones within a county for the purpose of developing or operating flood control projects or storm water control projects.

Flood control districts may be organized in a city, or in any part of a county, or among counties, for purposes that include the planning, development, acquisition, management, or maintenance of any facilities necessary to control floods, lessen their dangers, and reduce damages.

Growth Management Act.

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act (planning jurisdictions) and a reduced number of directives for all other counties and cities.

The GMA requires all jurisdictions to satisfy specific designation and protection mandates. All local governments, for example, must designate and protect critical areas. Critical areas are defined by statute to include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

The GMA includes planning requirements relating to the use or development of land in urban and rural areas. Among other obligations, counties that comply with the major requirements of the GMA (planning counties) must designate urban growth areas (UGAs) or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. "Urban growth" is defined by the GMA, in part, as a reference to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for specified agricultural, mineral resource, and rural purposes.

The GMA includes many requirements pertaining to UGAs that planning jurisdictions must satisfy. Using population projections made by the Office of Financial Management, planning counties and each city within these counties must include within UGAs areas and densities

sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding 20-year period. The UGAs must permit urban densities and include greenbelts and open space areas. The UGA determinations may include a reasonable land market supply factor and must permit a range of urban densities and uses. Additionally, a UGA provision grants planning jurisdictions comprehensive plan discretion to make many choices about accommodating growth.

Summary of Engrossed Bill:

Subject to specified exceptions, a county, city, or town is prohibited from expanding an UGA into the 100-year floodplain of any river or river segment that:

- is located west of the crest of the Cascade Mountains; and
- has a mean annual flow of 1,000 or more cubic feet per second.

This prohibition does not apply to expansions of an UGA where:

- the UGA is fully contained within a floodplain and lacks adjacent buildable areas outside the floodplain; or
- expansion is precluded outside the floodplain because: (1) urban governmental services cannot be physically provided to serve areas outside the floodplain; or (2) expansion outside the floodplain would require a river or estuary crossing to access the expansion; or
- certain areas within the floodplain are already subject to specified types of urban development and thus the exclusion from the urban growth area would be either impracticable or contrary to GMA goals; or
- the land within the area is owned by a GMA planning jurisdiction; or
- the rights to the development of the land within the area have been permanently extinguished and the future use of the land is limited to outdoor recreation, habitat enhancement, environmental restoration, storm water facilities, and flood control facilities, and such use will not result in specified adverse environmental impacts.

The mean annual flow of the rivers that may be subject to the act is to be determined by the Department of Ecology.

"100 year floodplain" is defined by reference to a section of the Washington Administrative Code that defines "special flood hazard areas" in accordance with specified federal standards.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) In order to prevent the flood-related tragedies we have seen in this state for many years, we need to begin more effective management of the development that occurs on floodplains. Flooding has caused hundreds of millions of dollars in property damage and

caused significant numbers of deaths and injuries. It is absurd to allow the continued development of flood-prone areas when we know the consequences in terms of public safety and financial loss. Accordingly, it is simply common sense for us to pass legislation that squarely addresses the flooding issues. Growth must be directed away from floodplains and further encroachment on floodplains needs to be actively discouraged. These are the goals of this bill. It should be noted that the bill only applies to the larger river systems in western Washington and has numerous, focused exceptions for those communities that already have significant development on floodplains. Passage of the bill would be a very proactive step towards stemming urban encroachment on floodplains.

(With concerns) The exceptions in the bill are necessary for the well-being of many communities in western Washington that are located on or adjacent to floodplains. However, these exceptions should be broader so as to encompass the unique situations faced by many such communities. Without broader exceptions, the bill could have a profound negative impact on the ability of many existing communities to grow. Also, critical areas requirements under the GMA already apply to floodplains, so local governments already have the authority to deal with floodplain issues themselves. Furthermore, for some reason unincorporated areas are not covered by the bill, which does not make much sense. Also, the bill should include a "no net loss standard" regarding buildable lands to ensure that the prohibitions in the bill do not result in a net loss of buildable land. If the bill results in some land being removed from development, then it should have a mechanism by which new developable land may be added.

(Opposed) None.

Persons Testifying: (In support) Representative White, prime sponsor; April Putney, Futurewise; Joe Tovar, American Planning Association; and Gordon White, Department of Ecology.

(With concerns) Dave Williams, Association of Washington Counties; and Timothy Harris, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.